

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JUAN CASTILLO,	§	
Petitioner,	§	
	§	
V.	§	
	§	
	§	NO. SA-12-CA-924-XR
RICK THALER, Director,	§	
Texas Department of Criminal	§	
Justice, Correctional Institutions Division,	§	
Respondent.	§	

REQUEST FOR GUIDANCE FROM THE COURT

COMES NOW JUAN CASTILLO, the Petitioner in the above styled and numbered cause, and files this Request for Guidance from the Court and would show as follows:

I.

This Court on October 2, 2012 appointed the undersigned counsel as federal habeas counsel for the Petitioner. See Document 3. This Court ordered that the habeas petition in this cause be filed on or before January 11, 2013.

II.

Mr. Castillo was convicted of capital murder and sentenced to death in Cause No. 2004-CR-1461A in the 186th Judicial District Court of Bexar County, Texas. That case was affirmed on direct appeal on May 2, 2007. Castillo v. State, 221 S.W.3d 689 (Tex. Crim. App. 2007). A petition for a writ of certiorari was not filed. Pursuant to 28 U.S.C. § 2244(d)(1), the one-year period of limitation for the filing of the federal petition for writ of habeas corpus begins to run when the judgment becomes final on direct appeal or the expiration of the time for seeking such review. “[A] conviction becomes final when a defendant’s options for further direct review are foreclosed, whether or not those options have been pursued.” United States v. Gamble, 208 F.3d 536, 537 (5th

Cir. 2000). Since certiorari was not sought in the case at bar, the judgment became final on direct appeal 90 days from May 2, 2007 which was July 31, 2007.

III.

Suzanne Kramer was appointed on September 9, 2005 to represent the Petitioner on his state habeas case. Ex parte Castillo, No. WR-70,510-01 (Tex. Crim. App, March 18, 2009). In August 2008, the Court of Criminal Appeals learned that Kramer may have failed to file a state habeas petition for the Petitioner. Id. Kramer informed the court by affidavit that she did file a habeas petition on September 29, 2007, and Kramer attached to her affidavit an unsigned copy of the petition she claimed to have filed and a copy of an envelope and postage receipt. Id. The Bexar County District Clerk, however, had no record of a petition having been filed. Id. The Court of Criminal Appeals then ordered Kramer to refile within ten days of March 18, 2009 the petition. Id. The Court of Criminal Appeals learned in April 2009 that Kramer failed to refile the petition. Ex parte Castillo, WR-70,510-01 (Tex. Crim. App., April 22, 2009). The court held Kramer in contempt and appointed John Economidy to represent the Petitioner on the state habeas. Id.; In re Suzanne Kramer, 2009 Tex. Crim. App. Unpub. LEXIS 831 (Tex. Crim. App., December 16, 2009). Mr. Economidy filed the state habeas petition on November 13, 2009. The Court of Criminal Appeals granted a Motion to Declare Application for Writ of Habeas Corpus Timely Filed as of October 11, 2007. The Court of Criminal Appeals on September 12, 2012 denied relief on the state habeas petition. Ex parte Castillo, WR-70,510-01 (Tex. Crim. App., September 12, 2012).

IV.

The Petitioner respectfully requests guidance from this Court regarding filing the federal habeas petition on January 11, 2013. Given the unique circumstances of this case, the Petitioner

respectfully requests the Court inform the Petitioner that waiting until January 11, 2013 to file the habeas petition will not result in the petition being deemed as untimely filed. The undersigned counsel was not involved at the state level of the Petitioner's case and will require sufficient time in which to read the state record and prepare and file the federal habeas petition.

WHEREFORE, PREMISES CONSIDERED, Mr. Castillo respectfully requests that this Court provide guidance to counsel regarding the effect of filing of the federal habeas petition on January 11, 2013.

Respectfully submitted,

GROSS & ESPARZA, P.L.L.C.

/s/ Michael C. Gross
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Attorney for the Petitioner,
JUAN CASTILLO

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to Leslie K. Kuykendall, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548 , and I certify that there are no non-CM/ECF participants.

/s/ Michael C. Gross